

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DAVID SCHNORR, an individual,	)	Case No.: 2:10-cv-01047-GMN-LRL
	)	
Plaintiff,	)	<b>ORDER</b>
vs.	)	
	)	
KONSTANTINOS KOURIS, an	)	
individual; LYUDMYLA RADCHENKO,	)	
an individual; ALL REAL ESTATE, INC.,	)	
a Nevada corporation f/k/a ALL REAL	)	
ESTATE, LLC; MERIDIAN LV, LLC, a	)	
Nevada Limited-Liability company;	)	
NATIONWIDE CAPITAL ASSET	)	
CORPORATION, a Nevada corporation;	)	
DOES 1 through 10; and ROE	)	
CORPORATIONS 11 through 20,	)	
	)	
Defendants.	)	
	)	

---

**INTRODUCTION**

Before the Court is Plaintiff's David Schnorr's Motion to Remand pursuant to 28 U.S.C. §1441(b) and for Costs and Fees pursuant to 28 U.S.C. §1447(c) (ECF No. 7). Defendants filed a Response on August 2, 2010 (ECF No. 11) and an Amended Response on the same day (ECF No. 12). Plaintiff filed a Reply on August 11, 2010 (ECF No. 13).

**FACTS AND BACKGROUND**

This suit arises from a breach of contract between Plaintiff David Schnorr and Defendants Konstantinos Kouris and Lyudmyla Radchenko. Also named as Defendants are All Real Estate, Inc. f/k/a All Real Estate, LLC, Meridian LV, LLC, and Nationwide Capital Asset Corporation which are all companies that are alleged to be wholly owned and controlled by both Kouris and Radchenko.

1 Plaintiff filed a Complaint on May 24, 2010 in the Eighth Judicial District Court  
 2 for the State of Nevada, County of Clark, alleging the breach of a contract involving the  
 3 purchasing, repairing and reselling of Meridian at Hughes Center Condominiums  
 4 condominium units which had been foreclosed upon. (Complaint 3:23-28, 4:1-16, ECF  
 5 No. 1-2). In addition to the breach of contract claim, Plaintiff alleges four (4) Nevada  
 6 common law causes of action and one (1) Nevada statutory cause of action. (*See*  
 7 Complaint, ECF No. 1-2).

8 The summons and complaint were served on Defendant Kouris, on May 28, 2010.  
 9 (Defendants' Statement 1:27-28, 2:1, ECF No. 6). In Defendants' Statement Regarding  
 10 Removal, Defendants admit that process was served on all Defendants by serving  
 11 Defendant Kouris on May 28, 2010. (*Id.* at 2:24-27). Defendants filed a petition for  
 12 removal based on diversity of citizenship on June 28, 2010. (ECF No. 1).<sup>1</sup> Plaintiff filed  
 13 the instant Motion to Remand on July 16, 2010. (ECF No. 7).

## 14 DISCUSSION

### 15 **A. Motion to Remand**

16 "If at any time before final judgment it appears that the district court lacks subject  
 17 matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). District courts  
 18 have subject matter jurisdiction over civil actions where no plaintiff is a citizen of the  
 19 same state as a defendant and the amount in controversy exceeds \$75,000. 28 U.S.C. §  
 20 1332(a). A civil action brought in state court may be removed by the defendants to a  
 21 federal district court if the district courts have original jurisdiction over the matter. 28  
 22 U.S.C. § 1441(a).

---

23  
 24  
 25 <sup>1</sup> Petition for removal was filed by Defendants Radchenko, All Real Estate, Inc, and Nationwide Capital Asset Corp. In the petition, Defendants claim that the case is stayed as to Defendant Kouris as he is currently in Chapter 11 Bankruptcy, Case No. 10-16105-mkn. (ECF No.1)

1 Removal statutes are strictly construed against removal jurisdiction. *Ritchey v.*  
2 *Upjohn Drug Co.*, 139 F.3d 1313, 1317 (9th Cir. 1998); *Gaus v. Miles, Inc.*, 980 F.2d  
3 564, 566 (9th Cir. 1992). “Federal jurisdiction must be rejected if there is any doubt as  
4 to the right of removal in the first instance.” *Gaus*, 980 F.2d at 566 (quoting *Libhart v.*  
5 *Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). The defendant always  
6 has the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566.

7 Any civil action claiming diversity jurisdiction shall only be removed “if none of  
8 the parties in interest properly joined and served as defendants is a citizen of the State in  
9 which such action is brought.” 28 U.S.C. § 1441(b). Plaintiff is a resident of the State of  
10 California. (Complaint 2:1-3, ECF No. 1-2). While Defendants Kouris and Radchenko  
11 claim to be citizens of a foreign state, they do admit, however, that their corporations and  
12 limited liability company entities are Nevada chartered and that they operate in Nevada.  
13 (Pet. for Removal 2:14-20, ECF No. 1). Accordingly, Defendants do not dispute that this  
14 case should be remanded to state court and admit that Defendants Nationwide Capital  
15 Asset Corp., and All Real Estate, Inc., are both Nevada corporations and citizens of  
16 Nevada pursuant to 28 U.S.C. §1332(c)(1). Therefore, the Court will remand this suit to  
17 state court.

#### 18 **B. Attorney’s Fees**

19 “An order remanding the case may require payment of just costs and any actual  
20 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. §  
21 1447(c). “[A]bsent unusual circumstances, attorney’s fees should not be awarded when  
22 the removing party has an objectively reasonable basis for removal.” *Martin v. Franklin*  
23 *Capital Corp.*, 546 U.S. 132, 136 (2005). However, the Court may award attorney’s fees  
24 in the absence of the defendant’s bad faith. *Balcorta v. Twentieth Century-Fox Film*  
25 *Corp.*, 208 F.3d 1102, 1106 n.6 (9th Cir. 2000).

1 Plaintiff requests an award of costs and attorney's fees if the case is remanded  
2 back to state court pursuant to 28 U.S.C. §1447(c). (Plaintiff's Mot. to Remand 2:7-9,  
3 ECF No. 7). Defendants claim to have attempted to remove the action in good faith  
4 based on a misunderstanding of the law. Defendants' counsel claims to have believed  
5 that in order to determine diversity, the Court only examines the parties that were actually  
6 served and that only Mr. Kouris and Ms. Radchenko were served when the petition for  
7 removal was filed. (Amended Response 3:14-19, ECF No. 12).

8 However, Plaintiff argues that Defendants filed the Petition for Removal with the  
9 intent to delay these proceedings. Specifically, Plaintiff alleges that Defendants filed the  
10 Petition for Removal to prevent an Order to Show Cause hearing that was scheduled to  
11 take place in state court. In their Petition for Removal, Defendants did not state adequate  
12 grounds for removal based upon diversity of citizenship. Defendants' petition for  
13 removal was very vague with regard to citizenship of the parties and in regards to  
14 whether or not all of the parties were served. Defendants did not give any indication that  
15 Kouris and Radchenko are actually citizens of another state and only proffered a vague  
16 statement that they are foreign citizens. Furthermore, Defendants' statement that service  
17 of process *may* not have been effectuated on the corporation and limited liability  
18 companies was not very compelling. The petition stated that Defendants were served  
19 when Mr. Kouris was served with the summons and complaint, but that they did not have  
20 access to the proof of service filed in state court. (Pet. for Removal 2:14-20, ECF No. 1).  
21 Finally, the timing of the filing of improper removal just prior to the Show Cause hearing  
22 scheduled in state court is very suspect.

23 This Court does find that Defendants have improperly removed this action in bad  
24 faith. Nevertheless, in the alternative and absent such a finding of bad faith, this court  
25 also finds that Defendants have also failed to provide an objectively reasonable basis for

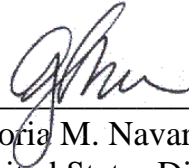
1 removal. Therefore, the Court grants Plaintiff's Motion for Attorney Fees and Costs.

2 **CONCLUSION**

3 IT IS HEREBY ORDERED that Plaintiff's Motion to Remand (ECF No. 7) is  
4 GRANTED on the basis that the removal was procedurally defective because the parties  
5 lacked complete diversity of jurisdiction.

6 IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney Fees and Costs  
7 is GRANTED. The Court will award Plaintiff reasonable attorney fees and costs.

8 DATED this 22nd day of December, 2010.

9  
10 

11 \_\_\_\_\_  
12 Gloria M. Navarro  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25